UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

VIET ANH VO, Plaintiff, v. REBEKAH E. GEE, Secretary of the Department of Health; DEVIN GEORGE, State Registrar; MICHAEL THIBODEAUX, Iberia Parish Clerk; DIANE MEAUX BROUSSARD, Vermilion Parish Clerk; LOUIS J. PERRET, Lafayette Parish Clerk, Defendants.	CIVIL ACTION NO.: 2:16-cv-15639 JUDGE: LEMELLE MAGISTRATE JUDGE: NORTH

BRIEF OF AMICUS CURIAE THE AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF LOUISIANA IN SUPPORT OF PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION

INTRODUCTION

This case concerns the State of Louisiana's refusal to issue a marriage license to two United States citizens in violation of their fundamental right to marry. More broadly, the case involves an unconstitutional, burdensome, and discriminatory requirement imposed on persons not born in the United States or its territories. This statutory requirement has the far-reaching effect of denying marriage rights to foreign-born persons and their intended spouses under a variety of circumstances, but the circumstances of this case are straightforward. The citizenship of Plaintiff and his fiancée are not in dispute, and neither are their identities or their eligibility to marry. The only question is whether the Constitution of the United States permits this State to single out foreign-born persons and deny them marriage certificates because they are unable, through no fault of their own, to produce birth certificates.

Amicus curiae the American Civil Liberties Union Foundation of Louisiana (the "ACLU-LA") respectfully submits this brief to amplify three key points in support of the conclusion that Louisiana's denial of marriage certificates violates the Constitution, and Plaintiff is therefore entitled to a preliminary injunction. First, the ACLU-LA writes to elaborate on Plaintiff's due process claim. Second, the statutory scheme at issue violates his right to equal protection under the law because it discriminates against him as a person born outside the United States. This discrimination stems from lawmakers' stated vigilance against the dreaded but false specter of "marriage fraud" but in fact arises from xenophobia and creates

another opportunity for invidious racial profiling. Finally, the statute at issue impermissibly attempts to regulate immigration, which is the sole provenance of the federal government, in violation of the Supremacy Clause.

INTEREST OF AMICUS

Amicus Curiae, the ACLU-LA, has a longstanding interest in litigating cases to promote the equal treatment and civic integration of immigrants and to challenge unconstitutional state and local laws targeting immigrant communities. See Mot. For Leave to File Br. Of Amicus Curiae at p. 2 (detailing interest of amicus).

LEGAL STANDARD

The grant or denial of a preliminary injunction lies within the district court's discretion. *Lando & Anastasi, LLP v. Innovention Toys, L.L.C.*, No. 15-154, 2015 U.S. Dist. LEXIS 140454, at *3 (E.D. La. Oct. 15, 2015) (citing *Janvey v. Alguire*, 647 F.3d 585, 592 (5th Cir. 2011); *Canal Auth. of State of Fla. v. Callaway*, 489 F.2d 567, 572 (5th Cir. 1974).

A plaintiff seeking a preliminary injunction must clearly show (1) a substantial likelihood of success on the merits, (2) a substantial threat of irreparable harm if the injunction is denied, (3) the threatened injury to him outweighs the injury to the party whom he seeks to enjoin, and (4) granting the preliminary injunction will not disserve the public interest. *Jefferson Cmty. Health Care Ctrs., Inc. v. Jefferson Par. Gov't*, No. 16-12910, 2016 U.S. Dist. LEXIS 98117, at *13 (E.D. La. July 26, 2016); *Planned Parenthood of Gulf Coast, Inc. v. Gee*, 837 F.3d 477, 488 (5th Cir. 2016).

ARGUMENT

I. Plaintiff Is Likely To Succeed On The Merits Of His Claim

A. Act 436 violates Plaintiff's due process, equal protection rights

Louisiana Act No. 436 ("Act 436")[1] creates an impermissible restriction on the fundamental marriage right in violation of the Fourteenth Amendment to the United States Constitution. Act 436 directly interferes with Mr. Vo's right to marry his fiancée—as well as her right to marry him—in violation of both the Due Process and Equal Protection Clauses.[2]

Marriage is a fundamental constitutional right. "Over time and in other contexts, the Court has reiterated that the right to marry is fundamental under the Due Process Clause." *Obergefell v. Hodges*, 135 S. Ct. 2584, 2598 (2015). "The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men." *Loving v. Virginia*, 388 U.S. 1, 12 (1967). Marriage is "one of the 'basic civil rights of man,' fundamental to our very existence and survival." *Id.* (quoting *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942)). *See also, e.g., M.L.B. v. S.L.J.*, 519 U.S. 102, 116 (1996) ("Choices about marriage, family life, and the upbringing of children are among associational rights this Court has ranked as of basic importance in our society ….") (citation omitted); *Turner v. Safley*, 482 U.S. 78, 95 (1987) ("[T]he decision to marry is a fundamental right …."); *Zablocki v. Redhail*, 434 U.S. 374, 384 (1978) ("[T]he right to marry is of fundamental importance for all individuals."); *Cleveland Bd. of Educ. v. Lafleur*, 414

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[1] The specific provisions to which Plaintiff and the ACLU-LA object are Sections 226(C)(1)(a), 226(C)(2), and 228 of Title 9 of the Louisiana Revised Statutes, as amended in Act 436.

[2] Section I of the Fourteenth Amendment provides in part: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1.

U.S. 632, 639-40 (1974) ("[F]reedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment.").

The doctrine of substantive due process safeguards individual liberty against "certain government actions regardless of the fairness of the procedures used to implement them." *Daniels v. Williams*, 474 U.S. 327, 331 (1986). Marriage's status as a fundamental right protected by the Due Process Clause means that a party may state a claim directly if that right is curtailed. In addition, where a restriction is imposed on a particular class of people, the restriction may separately violate the Equal Protection Clause of the Fourteenth Amendment. *E.g., Zablocki*, 434 U.S. at 382.

Act 436 violates the Equal Protection Clause because it imposes a restriction on a particular class of people: foreign-born persons. Under its terms, a foreign-born person is required to provide a passport or visa with a Form I-94, which a native-born person is not. *See* La. R.S. 9:226(C)(2). If the applicant (foreign- or native-born) cannot provide a birth certificate, he or she must provide a letter signed by the "proper registration authority" stating that a search was made but no such record was located. La. R.S. 9:227. After a hearing, if a justice of the peace or judge finds competent evidence that the applicant was born "in any state or territory of the United States," the judge may then order issuance of a marriage certificate. La. R.S 9:228. However, no such waiver exists for the foreign-born applicant—**the birth-certificate waiver is available only to those born in the United States or its**

territories. Thus, the statutory scheme created by Act 436 discriminates on the basis of national origin.

The Equal Protection Clause requires the consideration of whether classifications drawn by a statute constitute an arbitrary and invidious discrimination. *Loving*, 388 U.S. at 10. The *Loving* Court, which considered anti-miscegenation statutes, noted that racial classifications are subjected to "the most rigid scrutiny" and can only be upheld if they are "necessary to the accomplishment of some permissible state objective, independent of the racial discrimination which it was the object of the Fourteenth Amendment to eliminate." *Id*. at 12 (internal citation omitted). Ultimately, the Court held, "There can be no doubt that restricting the freedom to marry solely because of racial classifications violates the central meaning of the Equal Protection Clause." *Id*.

Just so here: The discrimination at issue in *Loving* was race-based, and the discrimination at issue in this case is based on national origin. Louisiana's discrimination against foreign-born persons, by providing no waiver to foreign-born persons who cannot produce a birth certificate, is not necessary to accomplish a permissible state objective. Indeed there is no permissible state objective, because no evidence was provided that "marriage fraud" either exists in Louisiana or that this statutory restriction would in any way prevent it. The statutory scheme creates a classification that is arbitrary, invidious discrimination, to no proper purpose.

Even in a case involving an undocumented immigrant, infringement of the right to marry has been rejected. *See Buck v. Stankovic*, 485 F. Supp. 2d 576 (M.D. Pa. 2007). In *Buck*, the plaintiffs were a U.S. citizen and a Mexican citizen who entered the country without authorization; they were denied a marriage license. *Buck*, 485 F. Supp. 2d at 579. As in this case, the asserted state interest justifying the policy was to prevent "marriage fraud." *Id*. at 585. The deputy register of wills denied the marriage license because Mr. Jose Guadelupe Arias-Maravilla's passport did not contain a visa showing his lawful presence in the United States. *Id*. The Court granted a restraining order/injunction so that plaintiffs could marry before Mr. Arias returned to Mexico in compliance with his departure order. *Id*. at 587.

The *Buck* court relied on reasoning that even an undocumented immigrant such as Mr. Arias possessed the same fundamental right to marriage as his fiancée. *Id*. at 582. The court relied on various precedents demonstrating the proposition that all persons—regardless of immigration status—are entitled to Constitutional rights such as those afforded by the Fourteenth Amendment. *See, e.g.*, *Theck v. Warden*, I.N.S. 22 F. Supp. 2d 1117, 1122 (C.D. Cal. 1998) (reasoning that "[a]s a general matter, persons within the jurisdiction of the United States should be considered to be protected by the Constitution, unless it has been expressly held otherwise.") Because the Pennsylvania policy was not "closely tailored to solely effectuate a sufficiently important state interest," the Court held that plaintiffs showed a reasonable probability that the policy violated the Due Process and Equal Protection Clauses. *Buck*, 485 F. Supp. 2d at 585.

While these are independent bases of unconstitutionality, whether Act 436 is analyzed directly as a violation of Plaintiff's substantive due process or as an impermissible classification under the Equal Protection Clause of the Fourteenth Amendment, the analysis is essentially the same: "state limitations on a fundamental right … are permissible only if they survive strict constitutional scrutiny." *Alexander v. Whitman*, 114 F.3d 1392, 1403 (3d Cir. 1997) (citation omitted). The *Turner* Court held that interfering with prison inmates' right to marry violated the Constitution under a lenient standard of review that permitted deference to prison officials. *Id*. at 89. Here, no analogous deference to Defendants is warranted.[3] Although states are permitted to impose reasonable regulations on marriage, the Supreme Court has made clear that states may not impose regulations that "interfere directly and substantially with the right to marry," unless they narrowly address a compelling state interest. *Zablocki*, 434 U.S. at 387. Act 436 prevents Plaintiff from exercising his fundamental right entirely.

As the Court stated in *Zablocki*, a case involving a ban on marriage by fathers in arrears on child-support payments, when a "statutory classification significantly interferes with the exercise of a fundamental right, it cannot be upheld unless it is supported by sufficiently important state interests and is closely tailored to effectuate only those interests." 434 U.S. at 388. *See also Parsons v. Del Norte*, 728 F.2d 1234, 1237 (9th Cir. 1984) ("[W]hen a government regulation directly and

[3] While the federal government enjoys special deference in its regulation of immigration, e.g., *Plyler*, 457 U.S. at 237 n.1. (Powell, J., concurring), state and local governments have no constitutional authority to regulate immigration—much less do they enjoy any deference in that area.

substantially interferes with the fundamental incidents of marriage … strict scrutiny [is] applicable."); *Mapes v. United States*, 576 F.2d 896, 901 (Ct. Cl. 1978) (strict scrutiny applicable "where the obstacle to marriage is a direct one, i.e., one that operates to preclude marriage entirely for a certain class of people….").

Act 436 bars the marriage of two classes of persons: (1) foreign-born persons who cannot produce birth certificates or satisfy other documentary requirements—a waiver for which is available to native-born persons; and (2) those who wish to marry such persons, including United States citizens such as Mr. Vo's fiancée. Because these classifications interfere with a fundamental constitutional right, they are subject to strict scrutiny. The State of Louisiana has no cognizable interest in denying the fundamental right to marry, certainly not for reasons of national origin. As the *Buck* case demonstrates, even an undocumented immigrant—which Mr. Vo is not—has the right to marry.

Act 436's provisions do not even accomplish the law's purported raison d'etre—to prevent "marriage fraud"—indeed, Defendants cannot show that such a problem exists, let alone that this "remedy" would cure it.[4] The documentary requirements of Act 436 do not prohibit "marriage fraud" because a foreign-born person who can produce a birth certificate, passport, and visa could legally obtain a marriage certificate in Louisiana but still be motivated not by love but by a desire for permanent citizenship. Act 436 irrationally presumes the inability to produce or

[4] An opponent of the legislation, state Rep. Conrad Appel, pointedly asked: "Why are we trying to fix a problem that doesn't exist?" *See* Tim Marcin, *Immigration Reform 2015: 'Marriage Fraud' Bill Targeting Undocumented Immigrants Approved By Louisiana Lawmakers*, INTERNATIONAL BUSINESS TIMES, available at: http://www.ibtimes.com/immigration-reform-2015-marriage-fraud-bill-targeting-undocumented-immigrants-1962516

obtain a birth certificate is evidence of fraudulent intent, when it is in fact more closely related to the socio-political circumstances of the country in which one is born—circumstances entirely beyond an applicant's control.[5]

Moreover, the comprehensive scheme of federal regulation that governs marriage by non-citizens—including one not lawfully present in the country—expressly permits them to become eligible for a visa by marrying a United States citizen.[6] Because Louisiana's law seeks to prohibit a non-citizen's adjustment of his citizenship status through marriage, its law preemptively conflicts with federal law (*see* §I(B), *infra*). And in the present case, the law has denied a U.S. citizen born in another country the right to marry in his home state. No legitimate purpose has been served by this restriction.

No legitimate public policy reason exists to prevent Mr. Vo's marriage to his fiancée, Heather Pham. On the contrary, public policy strongly encourages the state's sanction of their union because the couple already has undergone a sacramental marriage, expressing their indissoluble bond in accordance with their religious beliefs. This fact demonstrates that their union is the opposite of fraudulent, i.e. one motivated by love, not a desire for citizenship. The citizenship status of neither party would change should the State of Louisiana deign to authorize it.

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[5] Act 436 likewise presumes that immigrants have ulterior motives for seeking a marriage license—a presumption that is not applied when non-immigrants seek to marry. That presumption is, itself, evidence of invidious discrimination.

[6] *See, e.g.*, 8 U.S.C. §§ 1151, 1153, 1154, 1201, 1255.

The State of Louisiana "has long recognized the importance to society of the institution of marriage. The family is recognized as the fundamental unit of society. The state, therefore, encourages couples to marry and discourages their divorce." *Sanders v. Gore*, 676 So. 2d 866, 871 (La. App. 3rd Cir. 07/10/96). According to the Louisiana Supreme Court, the law's "attitude toward marriage relation has been stated as follows: 'Public policy, good morals, the highest interest of society require that the marriage relations should be surrounded with every safeguard …" *Succession of Butler*, 294 So. 2d 512 (La. 1974) (quoting *Halls v. Cartwright*, 18 La. Ann. 414 (1866)). The public policy of Louisiana is "that every effort must be made to uphold the validity of marriages." *Wilkinson v. Wilkinson*, 323 So. 2d 120, 124 (La. 1975) (citing *Succession of Gaines*, 227 La. 318, 79 So.2d 322 (1955)).

Because Louisiana's public policy strongly encourages marriage and urges that every effort must be made to uphold its validity, the purported state interest in preventing "marriage fraud" is neither compelling nor narrowly tailored in Act 436. Because Act 436 prevents Mr. Vo from marrying his fiancée, and is intended to prevent him from enjoying the rights and privileges of marriage, it violates his Due Process rights. Because Act 436 creates a separate classification for foreign-born persons and invidiously discriminates against them, it also violates Plaintiff's Equal Protection rights.

B. Act 436 violates the Supremacy Clause

Act 436 is also invalid under the Supremacy Clause of the United States Constitution, insofar as it interferes with the immigration policy and laws of the

federal government, which has sole authority to regulate immigration. "Power to regulate immigration is unquestionably exclusively a federal power." *DeCanas v. Bica*, 424 U.S. 351, 354 (1976). Because Act 436 conflicts with federal immigration law, it is precluded by the federal law. The Supreme Court of the United States has struck down numerous state laws relating to non-citizens on preemption grounds. *See, e.g.*, *Toll v. Moreno*, 458 U.S. 1, 10 (1982) (state denial of student financial aid); *Graham v. Richardson*, 403 U.S. 365, 377-80 (1971) (state welfare restriction); *Takahashi v. Fish & Game Comm'n*, 334 U.S. 410, 418-20 (1948) (state denial of commercial fishing license).

Act 436 directly conflicts with the federal immigration scheme, which contemplates marriage by foreign nationals regardless of immigration status. In the immigration context, "where the federal government, in the exercise of its superior authority in this field, has enacted a complete scheme of regulation … states cannot, inconsistently with the purpose of Congress, conflict or interfere with, curtail or complement, the federal law, or enforce additional or auxiliary regulations." *Hines v. Davidowitz*, 312 U.S. 52, 66-67 (1941).

The consequences of even a non-citizen's marriage are the subject of a comprehensive scheme of federal statutory regulation, which affirmatively contemplates marriages by persons including those lacking lawful immigration status. Title 8, section 1255(a) permits the adjustment of status of a non-citizen, including one not lawfully in the country, who becomes eligible for a visa by, *inter alia*, marrying a United States citizen. 8 U.S.C. §§ 1151, 1153, 1154, 1201, 1255.

Section 1255(i) permits adjustment of status for aliens who entered without inspection on the basis of, *inter alia*, marriage to a United States citizen who filed an appropriate petition before April 30, 2001. Act 436 recognizes none of these distinctions, preventing all foreign-born persons from marrying if they cannot supply a birth certificate and other documents. Consequently, the policy conflicts with the balance Congress has struck pursuant to its sole authority to regulate immigration. And in this instance, because Mr. Vo is not only a legal immigrant but also a citizen of the United States, any restrictions on his fundamental right to marry are a clear violation of U.S. law.

Notably, Congress has also expressly authorized granting legal status to individuals subject to deportation proceedings. Before 1990, the immigration statute provided that any person who married while in the course of deportation or exclusion proceedings could not obtain a change in status on the basis of marriage until that person lived outside of the United States for at least two years. 8 U.S.C.§ 1154(h) (1990). That provision created, in effect, an irrebuttable presumption of marriage fraud for two years. In 1990, Congress changed this provision, permitting a change in status where the immigrant "establishes by clear and convincing evidence to the satisfaction of the Attorney General that the marriage" was bona fide and "was not entered into for the purpose of procuring the alien's admission as an immigrant[.]" 8 U.S.C. § 1255(e)(3). *See also* H. Rep. No. 101-723 (1990), reprinted in 1990 U.S.C.C.A.N. 6710, 6731-32 (noting that legislation sought to address circumstance where "the marriage is indisputably bona fide, [but] the

current section 5 compels the alien spouse to reside outside the country for two years because there is no opportunity to establish the legitimacy of the marriage. … The American citizen spouse is forced, by the provision of section 5 IMFA, to choose between abandoning his/her spouse or abandoning his/her country.”). Thus, Congress not only indicated approval of the marriage of persons in deportation proceedings, it expressly provided for a way of obtaining permanent residence on the basis of a marriage entered into while a person was in this country facing deportation or exclusion.

Act 436 thus directly conflicts with the explicit, pro-marriage policies of Congress that underlie federal statutory immigration law. In this case it not only conflicts with policies intended to protect non-citizens, it also conflicts with the fundamental right of a U.S. citizen. The law, moreover, intrudes upon the federal government’s exclusive power to regulate immigration by requiring parish officials such as Defendants Thibodeaux, Broussard, and Perret to interpret federal immigration law governing status—workers who lack the authority, the expertise, any training—and without regard to the significant procedural safeguards used in determining immigration status within the federal system. In this case, such a determination has directly violated Plaintiff’s constitutional rights.

II. Plaintiff Will Suffer Irreparable Harm Without The Injunction

Denying Plaintiff the ability to marry plainly causes irreparable harm. The deprivation of a constitutional right causes irreparable harm. 11A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure, §

2948.1 (2d. 1995) (citing *Elrod v. Burns*, 427 U.S. 347 (1976)); *see also Opulent Life Church v. City of Holly Springs, Miss.*, 697 F.3d 279, 295 (5th Cir. 2012); *Tenafly Eruv Ass'n. v. Borough of Tenafly*, 309 F.3d 144, 178 (3d Cir. 2002); *Swartzwelder v. McNeilly*, 297 F.3d 228, 241 (3d Cir. 2002).

Moreover, denial of the fundamental right to marry constitutes irreparable harm, as district courts across the country have held. *See, e.g.*, Jones v. Perry, 2016 U.S. Dist. LEXIS 143987, at *26 (E.D. Ky. Oct. 18, 2016); *Marie v. Mosier*, 2016 U.S. Dist. LEXIS 96245, at *9 (D. Kan. July 22, 2016); *Searcy v. Strange*, 2015 U.S. Dist. LEXIS 8187, at *1 (S.D. Ala. Jan. 25, 2015); *Caspar v. Snyder*, 77 F. Supp. 3d 616, 641 (E.D. Mich. 2015); *Campaign for S. Equal. v. Bryant*, 64 F. Supp. 3d 906, 950 (S.D. Miss. 2014); *Bradacs v. Haley*, 58 Supp. 3d 514, 532 (D.S.C. 2014); *Latta v. Otter*, 771 F.3d 496, 500 (9th Cir. 2014); *Majors v. Jeanes*, 48 F. Supp. 3d 1310, 1317 (D. Ariz. 2014); *Burns v. Hickenlooper*, 2014 U.S. Dist. LEXIS 100894, at *7 (D. Colo. July 23, 2014); *Evans v. Utah*, 21 F. Supp. 3d 1192, 1210 (D. Utah 2014); *Glass v. Trowbridge*, 2014 U.S. Dist. LEXIS 65083, at *14 (W.D. Mo. May 12, 2014).

The *Jones* case illustrates the harm at issue here. The *Jones* plaintiff's intended marriage was thwarted by a county clerk who refused to issue a marriage license because the plaintiff's intended fiancée was incarcerated and the clerk insisted that the law required both parties to appear, physically, at the clerk's office. *Jones* at *1. Finding no basis in state law for the in-person requirement, the Court found that irreparable harm to the plaintiff flowed "naturally from [the]

constitutional violation" and permanently enjoined the clerk from requiring the fiancée to appear at her office before issuing a marriage license. *Id*. at *1, *25, *27.

In addition to finding that denial of the right to marry constituted irreparable injury, several of the above-cited courts have found attendant harms—such as loss of dignity, loss of status, legal uncertainty, emotional harms, and denial of significant benefits—also constituted irreparable injuries. See *Caspar*, 77 F. Supp. 3d at 641 (finding emotional injury and harm to the couple's dignity); *Bradacs*, 58 Supp. at 532 (citing denial of significant benefits); *Majors*, 48 F. Supp. 3d at 1317 (noting loss of dignity and status); *Evans*, 21 F. Supp. 3d at 1210 (emphasizing legal uncertainties and lost rights). "The lifelong union of a man and a woman always has promised nobility and dignity to all persons, without regard to their station in life." *Obergefell*, 135 S. Ct. at 2594.

The ability to enter a legal, i.e. "civil," marriage, has become a matter of special concern to Plaintiff since he and his fiancée have already had a sacramental marriage. They have had to explain to friends and family that they are "not really" married and bear the constant, shameful sense that their marriage is viewed as illegitimate, or worse—a sham. Thus the alleged purpose of Act 436, to prevent marriage "fraud," has transformed a loving, legitimate union into one that bears the unearned stigma of fraudulence. With each passing day, Mr. Vo and Ms. Pham suffer the irreparable harm of lost dignity and deprivation, not only of the legal legitimacy of their marriage but all of the attendant protections and benefits of a

marriage license.[7] Plaintiff has suffered, and will continue to suffer, irreparable harm until his marriage is recognized under Louisiana law.

III. Constitutional Violations Outweigh Harm Posed By An Injunction

Defendants would suffer no discernable harm by the issuance of an injunction. The statutory regime in place before the passage of Act 436 provided stringent documentary requirements. For example, the State previously required, *inter alia*, a current driver's license, state identification, or passport; Social Security numbers for both parties; and a certified copy of a birth certificate or certified birth card for both parties. Crucially, the law allowed for a waiver if an applicant not born in Louisiana could not supply a birth certificate. Act 436 effectively abolished that waiver, which would have enabled Plaintiff to obtain his marriage license. However, the law contained several safeguards to prevent against "marriage fraud" that would persist in the absence of the unconstitutional provisions created by Act 436 (Sections 226(C)(1)(a), 226(C)(2) and 228). Putting aside the fact that "marriage fraud" was a non-existent problem before Act 436, Defendants cannot show that the prior to Act 436 failed to prevent it. Regardless, the violations of Plaintiff's constitutional rights far outweigh any harm posed by an injunction.

IV. Granting An Injunction Would Serve The Public Interest

The public interest is always served by ensuring compliance with the Constitution and civil rights law. *See*, *e.g.*,*Valley v. Rapides Parish School Board*,

[7] Many of these benefits are economic, such as the right to own property jointly and file taxes jointly, public assistance benefits, Social Security, Medicare, inheritance, and disability benefits, and consumer benefits such as receiving family rates for insurance; they also non-economic benefits including the right to make decisions about each other's medical care; the spousal testimonial privilege; employment benefits; housing benefits such as living in areas zoned "family only," and countless others.

118 F.3d 1047, 1056 (5th Cir. 1997) (finding that the public interest would be undermined if unconstitutional actions of a school board were permitted to stand); *G&V Lounge, Inc. v. Mich. Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir. 1994) (holding that "it is always in the public interest to prevent the violation of a party's constitutional rights.") (citation omitted); *Awad v. Ziriax*, 670 F.3d 1111, 1132 (10th Cir. 2012) (citing *G&V Lounge, Inc.*, 23 F.3d at 1079).

As discussed above, Louisiana's public policy favors and encourages marriage and its protection. Because Louisiana has no legitimate interest in preventing the legal marriage of Plaintiff and his fiancée, and because an injunction would prevent the violation of constitutional rights, the public interest would be served by granting an injunction in this case.

CONCLUSION

As the United States Supreme Court recently ruled,

> No union is more profound than marriage, for it embodies the highest ideals of love, fidelity, devotion, sacrifice, and family. In forming a marital union, two people become something greater than once they were. As some of the petitioners in these cases demonstrate, marriage embodies a love that may endure even past death. It would misunderstand these men and women to say they disrespect the idea of marriage. Their plea is that they do respect it, respect it so deeply that they seek to find its fulfillment for themselves. Their hope is not to be condemned to live in loneliness, excluded from one of civilization's oldest institutions. They ask for equal dignity in the eyes of the law. The Constitution grants them that right.

Obergefell, 135 S. Ct. at 2608 (2015). The State of Louisiana, by preventing the legal marriage of Mr. Vo and Ms. Pham through Act 436, has itself disrespected marriage, along with the ideals it represents, and excluded two

of its citizens from one of civilization's oldest institutions. The Plaintiff here wants nothing more or less than to pursue his Constitutional right to marry, which has been wrongly denied to him by the State on a basis of invidious discrimination. For the reasons stated above, Plaintiff's request should be granted.

Respectfully submitted by:

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